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10 **UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
11 **OAKLAND DIVISION**

12 \_\_\_\_\_  
WILDEARTH GUARDIANS, )  
13 Plaintiff, ) Case No. 4:11-cv-05651-YGR  
v. )  
14 ROBERT PERCIASEPE,<sup>1</sup> )  
in his official capacity as Acting Administrator of )  
15 the United States Environmental Protection Agency,) consolidated with,  
Defendant. )  
16 \_\_\_\_\_)  
\_\_\_\_\_  
17 MIDWEST ENVIRONMENTAL DEFENSE )  
CENTER, and ) Case No. 4:11-cv-05694-YGR  
18 SIERRA CLUB, ) REPLY IN SUPPORT OF  
Plaintiffs, ) ADMINISTRATIVE MOTION  
19 v. ) TO ENTER JUDGMENT  
ROBERT PERCIASEPE, )  
20 in his official capacity as acting Administrator of )  
the United States Environmental Protection Agency,) )  
21 Defendant. )  
\_\_\_\_\_) )  
22 \_\_\_\_\_

23 <sup>1</sup> Pursuant to Fed. R. Civ. P. 25, Mr. Perciasepe is automatically substituted for his predecessor in office,  
Lisa P. Jackson.

1 Plaintiffs offer this short reply in support of their Administrative Motion to Enter  
2 Judgment. In Defendant's Opposition to Administrative Motion to Enter Judgment, Defendant  
3 Robert Perciasepe (EPA) offers a summary of the relevant stages in this litigation but leaves out  
4 one. That is, on February 8, 2013, EPA appealed the Court's December 7, 2012 order on EPA's  
5 motion to amend. EPA voluntarily dismissed this appeal and the Court of Appeals issued its  
6 mandate on February 21, 2013, thus returning jurisdiction to this Court.

7 Even under EPA's interpretation of Rule 58(c), it would make no sense for judgment to  
8 enter, at least for the purposes of establishing the time to file for attorneys' fees, until an appeal  
9 is decided. Otherwise, the parties can be litigating attorneys' fees and the district court would  
10 have to rule on the issue, before anyone knew whether the case was going to be overturned on  
11 appeal, thus negating the basis for entitlement to attorneys' fees. Thus, EPA's interpretation  
12 would lead to significant wastes of the parties and judicial resources by forcing parties to  
13 litigate attorneys' fees while entitlement to fees is clearly in question.

14 A better interpretation of Rule 58(c) is that the 150 days to enter judgment runs, when  
15 there is an appeal, from when the Court of Appeals issues its mandate. In this case, the Court of  
16 Appeals issued its mandate on February 21, 2013. Thus, final judgment would issue on July 22,  
17 2013 under Rule 58(c). As that date has not passed, the Court should enter the final judgment  
18 submitted by Plaintiffs.

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20 Respectfully submitted,

21 /s Robert Ukeiley

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Dated: July 1, 2013